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AT&T Wireless Services, Inc.
Fourth Floor
1150 Connecticut Ave., NW
Washington, DC 20036
202 223-9222
FAX 202 223-9095

May 13, 1997

David Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Washington, D.C. 20554

RECEIVED
MAY 13 1997
Federal Communications Commission
Office of Secretary

Re: Ex Parte Presentation in CC Docket No. 94-54

Dear Mr. Furth:

As we have discussed with you and your staff, AT&T Wireless Services, Inc. ("AWS"), despite its initial opposition, now is convinced that the Commission must mandate that all CMRS providers offer automatic roaming to other CMRS providers that have equipped their customers with technically compatible handsets.

AWS, the largest wireless carrier in the country, is an incumbent cellular provider in 113 MSA/RSAs and a new entrant broadband PCS provider in 21 MTAs. AWS originally believed that marketplace forces were an adequate substitute for an automatic roaming mandate because CMRS providers have strong economic incentives to sell airtime to the customers of other carriers.¹ Allowing customers to roam automatically -- rather than subjecting them to cumbersome credit card roaming -- stimulates customers' use of their phones and increases the roaming revenues of the visited market. AWS therefore assumed that automatic roaming agreements between PCS and cellular carriers would be no more difficult to obtain than the ubiquitous arrangements that exist today among cellular providers. AWS underestimated, however, the degree to which certain incumbent cellular carriers are willing to sacrifice roaming revenue in order to impede the entrance of a new PCS competitor in their markets. An automatic roaming mandate is necessary to break this lockout.

AWS has announced plans to launch PCS service in several major markets by year end.

¹See Comments of AT&T Wireless Services, Inc., CC Docket No. 94-54, at 4 (filed October 4, 1996).

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It also has announced plans to supply its customers with dual/mode dual/band handsets that will allow customers to move seamlessly from AWS' digital PCS systems to the analog systems of cellular carriers when the customer moves out of range of AWS' cell sites.² This configuration is intended to allow AWS' new PCS customers to obtain wide-area, in-market coverage by providing them with service on AWS' system and allowing them to roam on an incumbent cellular carrier's system in areas not yet reached by AWS' facilities. AirTouch Communications, Inc., SouthwestCo (a wholly owned subsidiary of Bell Atlantic-NYNEX Mobile), Ameritech and other incumbent cellular carriers have flatly refused to negotiate in-market roaming arrangements with AWS. Other carriers, such as Bell Atlantic-NYNEX Mobile, are willing to consider in-market roaming, but only at rates of \$3.00 per day and \$1.00 per minute, as compared with significantly lower rates for cellular roaming. The only justification provided by these carriers for their refusal to deal or their discriminatory rate structure is AWS' identity as an incoming, in-market competitor.

To curb this anticompetitive behavior, AWS urges the Commission to adopt an automatic roaming mandate that mirrors its existing CMRS resale rule.³ Under this rule, CMRS providers must allow automatic roaming by all other CMRS providers' customers for a period of five years from the date the last group of initial licenses for broadband PCS spectrum in the 1850-1910 and 1930-1990 MHz bands is awarded.⁴ This rule, like the existing CMRS resale rule, would require CMRS providers to allow the customers of other facilities-based competitors to roam in-market if they have technically compatible handsets. In addition, the Commission should state that the identity of a carrier as a facilities-based competitor in another carrier's market is not justification for denying it the same automatic roaming rates offered to out-of-market carriers. Without such a statement, AWS and other incoming PCS providers will be forced to file time-consuming and expensive formal complaints to stop overt discriminatory treatment of PCS roamers.

Absent the adoption of an automatic roaming rule, AWS will be forced to use other methods to break this lockout. For example, AWS has had to tell SouthwestCo, a subsidiary of Bell Atlantic-NYNEX Mobile that provides service in Phoenix and El Paso, that it will terminate all of its existing automatic roaming arrangements with SouthwestCo unless the company agrees to provide automatic roaming for AWS' PCS customers in those markets. Thus, without an agreement from SouthwestCo, none of AWS' cellular or PCS subscribers will have automatic roaming on SouthwestCo's systems, and none of SouthwestCo's customers will be able to roam

²"Dual mode" refers to the handset's ability to switch from a digital mode to an analog mode. "Dual band" refers to the handset's ability to switch from the 1900 MHz PCS band to 800 MHz cellular band.

³47 C.F.R. § 20.12 (1996).

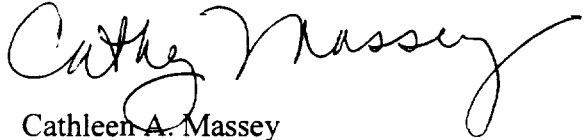
⁴By including a five-year sunset, the Commission will address any concern that an open-ended automatic roaming rule would discourage build-out of less populated portions of a PCS provider's market.

automatically on any of AWS' cellular or PCS systems. Although this strategy may be successful, it will degrade service for AWS' and SouthwestCo's customers, who will temporarily be without automatic roaming, and cost the carriers themselves significant roamer revenues. Even this option is not available to smaller PCS providers that lack a large pool of existing roamer dollars with which to negotiate. For them, the only way to break the lockout may be to siphon traffic through a carrier with an existing roamer contract or formally become an in-market reseller. Each of these options introduces inefficiencies that do not exist under a straightforward automatic roaming arrangement.⁵

AWS, which rarely if ever supports the promulgation of new regulations governing its operations, has nonetheless made the determination that the burden of an automatic roaming mandate is far outweighed by the harm that will be inflicted upon its PCS operations if incumbent cellular carriers are allowed to persist in their anticompetitive behavior. Now that the Commission has the facts before it, AWS urges it to adopt an automatic roaming mandate as soon as possible. Only quick action will prevent this lockout strategy from succeeding.

Please do not hesitate to contact me should you have questions or comments regarding this submission.

Sincerely,



Cathleen A. Massey

cc: Dan Phythyon
Rosalind Allen
Jeffery Steinberg
Jackie Chorney
Thomas Boasberg
James Coltharp
David Sidall
Suzanne Toller

⁵For example, if the carrier were to become a reseller in the portion of the market where it lacks facilities it would have to provide each customer with two numbers in its phone -- one number for facilities-based coverage and the other for reseller coverage. Customers would then have to switch their phones between these two numbers whenever they cross the line between the coverage areas. AWS believes that customers will find this solution unworkable.



Cathleen A. Massey
Vice President - External Affairs

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May 13, 1997

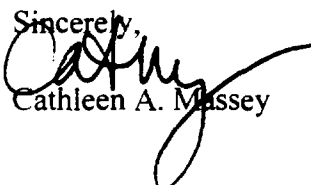
David Furth, Esq.
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, DC 20554

Re: Petition of US WEST, Inc. for Declaratory Ruling that Roseville,
Minnesota, Ordinances Inhibit Entry of CMRS Providers in
Contravention of the Communications Act

Dear Mr. Furth:

AT&T Wireless Services, Inc. (AWS) submitted a letter yesterday to respond to the questions posed in your March 13, 1997 letter to Elridge A. Stafford of US WEST, Inc. Several of the attachments included with the letter were difficult to read. I have enclosed somewhat more legible copies of Exhibit F (City of Buffalo Proposed Ordinance Amendment Chapter 440) and Exhibit G (The Town of Swampscott, Massachusetts, Section 11, Article III - "Wireless Communications Services District").

Please let me know if I can be of further help in this matter.

Sincerely,

Cathleen A. Massey

Attachments

cc: William F. Canton, Acting FCC Secretary
Dan Phythyon, Wireless Telecommunications Bureau
Rosalind Allen, Wireless Telecommunications Bureau
Jeff Steinberg, Wireless Telecommunications Bureau
Laura Smith, Wireless Telecommunications Bureau
Robert C. Bell, for the City of Roseville
Elridge J. Stafford, US WEST, INC.
Luisa Lancetti, for US WEST, INC.



TOWN OF SWAMPSCOTT

OFFICE OF THE

TOWN CLERK - COLLECTOR OF TAXES

ONE SOUTH BEACON STREET, SUITE 200

SWAMPSCOTT, MASSACHUSETTS 01946

ADULTS: 10.00
JUVENILES: 5.00
ADULTS: 10.00
JUVENILES: 5.00
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OCTOBER 10, 1996

NOTICE OF A SPECIAL TOWN MEETING
Tuesday, October 30, 1996
7:45 P.M.

TO THE TOWN MEETING MEMBERS:

Notice is hereby given in accordance with Article 12, Section 2, of the By-Laws of the Town of Swampscott that a Special Town Meeting will be held on Tuesday, October 30, 1996 beginning at 7:45 P.M. in the Auditorium of Temple Beth El, 55 Highland Avenue.

Respectfully, Martin C. Coleman, Sec., will preside.

Essex, MA

Jack L. Parker
Clerk of Swampscott

To either of the Councilors of the Town of Swampscott in said county:

CERTIFICATE:

In the name of the Commonwealth of Massachusetts you are directed to notify the inhabitants of the Town of Swampscott qualified to vote in elections and in town affairs to assemble in the auditorium of Temple Beth El on Atlantic Avenue on Monday, the twenty-eighth day of October, 1996, at 7:45 P.M. then and there to act on the following articles, viz:

ARTICLE 1. To use if the Town will vote to appropriate a sum of money to the account of unpaid bills for the purpose of settling all bills contracted prior to July 1, 1994, and remaining unpaid at the time of the closing of the Town's books for the year ending June 30, 1994, according to the records of the Town Accounting, or take any action relative thereto.
Sponsored by the Board of Selectmen

CONSENT: There are no unpaid bills from the previous fiscal year for Health Nurse
Theresa SGA, MA, and Legal Services - \$31,116.

The Finance Committee recommends that the Town vote to appropriate \$75,128 from the cash for the purposes specified in this Article.

ARTICLE 2. To use if the Town will vote to amend the General By-Laws by adding a new Article as follows:

"Launching and landing hydro-powered personal watercraft from the shores and piers of Swampscott Harbor and operating within Swampscott Harbor is prohibited. Operation: "Hydro-powered personal watercraft" shall include all personal watercraft propelled by machinery and designed to travel over water including but not limited to jet skis and surf jays".
Sponsored by the Board of Selectmen

CONSENT: This Article appears to correct existing language in a prior years Article.

The Finance Committee recommends that the Town vote to approve this Article.

ARTICLE 3. To use if the Town will vote to rescind the action taken under Article 49 of the 1996 Annual Town Meeting which established a Board of Election Commissioners by accepting Chapter 51, Section 16A, Massachusetts General Laws, and vests the functions of the Election Commission to the Town Clerk with the support of a Board of Registrars of Voters as set forth in Chapter 51, Section 15, Massachusetts General Laws, or take any action relative thereto.
Sponsored by the Board of Selectmen

CONSENT: The Election Commission has existed for 35 years, and no persuasive argument has been made to make this change.

The Finance Committee recommends that action on this Article be indefinitely postponed.

ARTICLE 4. To use if the Town will vote to amend the Zoning By-Law of the Town of Swampscott to insert the following language as a new second paragraph in Article III, Section 8 General:

"All existing municipal facilities are deemed allowed uses in all districts where not provided for by Article III, Sections 2(2) and 3(5)", or take any action relative thereto.
Sponsored by the Board of Selectmen

ARTICLE 5. To see if the Town will vote to amend the Zoning By-Law of the Town of Swampscott by adding Section 11, Home Communications, to Article III, Use Regulations as follows:

- a) The residential appearance and character of the premises are preserved.
 - b) The buildings or premises occupied shall not be residential objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, evidence of odor, gas, smoke, dust, noise, electrical disturbance, or in any other way.
 - c) There shall be no display of goods or wares visible from the street.
 - d) No commercial vehicles shall be parked on public ways at any time except in pursuit of customary occupational use of said vehicles.
 - e) Commercial deliveries shall be limited to an average of two per day during normal business hours by vehicles that do not obstruct traffic.
 - f) Not more than (1) person other than residents of the premises are regularly employed in such use.
 - g) No trading or sale of commodities is regularly conducted except for products made on the premises or of parts of other items customarily maintained in connection with said industrial or the necessary use.
 - h) No signs shall be permitted.
 - i) Hours of operation shall within reasonable limits presently enforced by the Town of Swampscott.
 - j) An annual permit for for home-occupied business be established by the Board of Assessors.
 - k) Any action of this article should be subject to review by the Board of Appeals, or take any action relating thereto.
- Sponsored by the Planning Board

ARTICLE 6. To see if the Town will vote to amend the Swampscott Zoning By-Laws as follows:
Add the following new Section 11 to Article III as follows:
Section 11 Wireless Communications Services District

- A. Purpose: The purpose of this section is to establish a district in which wireless communications services may be provided with minimal harm to the public health, safety and general welfare. Specifically, the Wireless Communications Services District has been created to: (a) protect the general public from hazards associated with wireless communications facilities; and (b) insulate visual impacts from wireless communications facilities on residential districts within Swampscott. This section does not apply to satellite dishes and antennas for residential use.
- B. Definitions:
A "wireless communications facility" shall mean a wireless communications monopole, including antennas and accessory structure, if any, which facilitates the provision of wireless communications services.
"Wireless communications services" shall mean the provision of the following types of services: cellular telephone service, personal communications and enhanced specialized mobile radio service.
- C. Description of Areas Included in the Wireless Communications Services District:
1. The Wireless Communications Services District shall include all land owned by the Town of Swampscott.
2. The Wireless Communications Services District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.
- D. Use Restrictions
1. Permitted uses: A wireless communications facility (including antennas and accessory structure, if any), antenna or satellite dish may be erected in a Wireless Communications Services District upon the issuance of a special permit by the Zoning Board of Appeals pursuant to Article VI, Section 5, subject to site plan approval as set forth herein in Article V, Section 14, and subject to all of the following conditions:
 - (a) The only wireless communications facilities allowed are free-standing monopoles, with associated antenna and/or parabolic. Lattice style towers and similar facilities requiring three or more legs and/or guy wires for support are not allowed.
 - (b) To the extent feasible, all service providers shall co-locate on a single facility. Wireless communications facilities shall be designed to accommodate the maximum number of users technologically practical. The intent of this requirement is to reduce the number of facilities which will be required to be located within the community.
 - (c) Any proposed extension in the height, addition of color, antennas or parabolic, construction of a new facility, or replacement of a facility, shall be subject to a new application for an amendment to the Special Permit.
 - (d) New facilities shall be considered by the Zoning Board of Appeals only upon a finding by the Zoning Board of Appeals that existing or approved facilities cannot accommodate the wireless communications equipment planned for the proposed facility.
 - (e) The site in question shall contain at least 40,000 square feet.
 - (f) No facility or attached accessory antenna shall exceed sixty (60) feet in height as measured from ground level at the base of the facility, in the event that an antenna or dish is affixed to an existing structure, such antenna or dish shall not exceed ten (10) feet in height above the level of the peak of its attachment to the structure.

- (g) All facilities shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future use.
- (h) A facility shall not be erected nearer to any property line than a distance equal to the vertical height of the facility (exclusive of any apparatus device), measured at the mean finished grade of the facility base.
- (i) Sitings shall be such that the view of the facility from adjacent streets, residential neighbors and other uses of Town shall be as limited as possible. All facilities shall be painted or otherwise colored so they will blend in with the landscape or the structure on which they are located. A different coloring scheme shall be used to blend the facility with the landscape below and above the top of building line.
- (j) Wireless communications facilities shall be strictly screened from viewers and residential neighborhoods.
- (k) Planting shall be provided to control access to wireless communications facilities and shall be compatible with the scenic character of the Town.
- (m) Existing on-site vegetation shall be preserved to the maximum extent practicable.
- (n) There shall be no signs, except for emergency signs, on temporary signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform with the Sign Zoning By-Law (Article III, Section 10 of the Swampscott Zoning By-Law).
- (o) Night lighting of the facilities shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergency and/or as required by FAA.
- (p) There shall be a minimum of one (1) parking space for each facility, to be used in connection with the maintenance of the facility and the site, and not to be used for the permanent storage.
- (q) To the extent technologically feasible, all support infrastructure from the facility shall be via land lines.
- (r) Applicants proposing to erect facilities on municipally owned land or structures shall provide evidence of contractual authorization from the Town of Swampscott to conduct wireless communications services on municipally owned property.
- (s) Traffic associated with the facility and accessory facilities and structures shall not adversely affect existing ways.
- (t) Facilities shall have either antennas may be located on structures or may be free-standing. Satellite dishes and/or antennas shall be situated on a structure in such a manner that they are screened, preferably not being visible from existing streets. Free standing dishes or antennas shall be located on the landscape in such a manner as to be minimally visible from existing streets and residences and to blend the same to remove existing vegetation. All equipment shall be colored, painted and/or installed to blend into the structure and/or the landscape.
- (u) Annual certification demonstrating compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Building Inspector by the Special Permit Holder.
- (v) All existing facilities or part thereof or accessory facilities and structures which have not been used for one (1) year shall be dismantled and removed at the owner's expense.
- 2. **Procedure for a Special Permit:**
 - 1. All applications for wireless communications facilities, antennas or satellite dishes shall be made and filed on the applicable application forms for the plan and special permit in compliance with the Swampscott Zoning Board of Appeals Application Instructions. In addition to the requirements for the Plan Review under Article V, Section 16 of the Swampscott Zoning By-Law, the copies of the following information must be submitted for an application to be considered complete:
 - (a) A locus plan at a scale of 1" = 200' which shall show all property lines, the exact location of the proposed structure(s), street, landscape features, residential dwellings and neighborhoods and all buildings within five-hundred (500) feet of the facility.
 - (b) A color photograph or rendition of the facility with an antenna and/or parabolic dishes or antennas, a color photograph or rendition illustrating the dish or antennas at the proposed location is required. A rendering shall also be prepared illustrating a view of the landscape, dish or antennas from the nearest street or street.
 - (c) The following information must be prepared by a professional engineer:
 - (i) a description of the facility and the technical, economic and other reasons for the proposed location, height and design.
 - (ii) confirmation that the facility complies with all applicable Federal and State standards.
 - (iii) a description of the facility including the number and type of panels, antennas and/or transmitter/receiver that it can accommodate and the basis for these calculations.
 - (d) If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations established by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Safety.
 - (e) The applicable zoning and existing laws as cited in the application guidelines.

F. Exceptions

1. The following types of wireless communications facilities are exempt from this Section 11:
 - (a) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that (1) the tower is not used or licensed for any commercial purpose, (2) the tower must have a cost or replacement value of less than \$10,000; and (3) the tower must be removed if the use is discontinued for one year.
 - (b) Facilities used for the purposes set forth in M.G.L. Chapter 40A, Section 3.

Sponsored by the Board of Selectmen

COMMENT: The Town is only three square miles, and a 60 foot tower may be a detriment to surrounding property values.

The Finance Committee recommends that action on this Article be indefinitely postponed.

ARTICLE 7. To see if the Town will vote to accept Chapter 71 of the Acts of 1996, Massachusetts Legislature, An Act authorizing certain public employees creditable retirement service plans for active service in the armed forces.

Sponsored by the Swampscott Retirement Board

COMMENT: This Article allows Town Employees who are veterans to buy back up to five years of service time towards their pensions. There is no significant financial impact to the Town.

The Finance Committee recommends that the Town vote to approve this Article.

ARTICLE 8. To see if the Town will vote to appropriate the necessary funds for the Town's share of the 1996 Transportation Bond issue to be expanded by the Public Works Department subject to conditions detailed by the Massachusetts Highway Department pursuant to Chapter 113 of the Acts of 1996 and that the Treasurer is authorized to borrow (temporarily) the funds in anticipation of reimbursement, or take any action relative thereto.

Sponsored by the Board of Public Works

COMMENT: Requested to allow the Town to expand Chapter 90 money for highway construction. Appropriation amount \$11,764 to be funded by a grant at no cost to the Town.

The Finance Committee recommends that the Town vote to appropriate the necessary funds for the purposes specified in this Article.

ARTICLE 9. To see if the Town will vote to raise and appropriate, transfer from available funds or borrow the sum of twenty six million, three hundred ten thousand dollars (\$26,310,000) for the purpose of planning, designing and constructing:

- 1) a middle school on land owned by the Town of Swampscott off Puma Avenue at the site of the Swampscott High School, said funds for this purpose to be expended by a School Building Committee, if one exists, with the approval of the Board of Selectmen and the School Committee.
- 2) renovations to the remaining existing school buildings, Clark Hallway, Madara, Smalley, Old Middle School and the High School, said funds for this purpose to be expended by the School Committee, provided that any appropriation and debt authorization under this article be contingent upon passage of a Proposition 2 1/2 debt exclusion under M.G.L. Ch 39, 21C(2), or take any action relative thereto.

Sponsored by the School Committee

The Finance Committee will report on this Article at Town Meeting.

ARTICLE 10. To see if the Town will vote to create a School Building Committee to be appointed by the Moderator in accordance with the provisions of M.G.L. Ch 71, 6B including the Superintendent of Schools or her designee and a member of the School Committee as members, or take any action relative thereto.

Sponsored by the School Committee

The Finance Committee will report on this Article at Town Meeting.

10-24-1996 10:58PM FROM

P. 6

And you are directed to serve this Warrant by posting an attested copy thereof at the Town Administration Building, or the Post Office, and in at least two public and conspicuous places in each precinct in the Town, and at or in the immediate vicinity of the railroad station not less than fourteen (14) days before the date appointed for said meeting.

Hereof fail not and make due return of the Warrant, with your doings thereon, to the Town Clerk at the time and place of meeting aforesaid.

Given under our hands this first day of October, 1996.

Douglas F. Allen, Chairman

James M. Baker, Vice Chairman

Daniel R. Samsonville

A true copy: Attest

Peter J. Cassidy

Kenn F. Murphy
Constable

Paul E. Levenson

Telecommunications service. The providing or offering for rent, sale or lease, or in exchange for other value received, of the transmission of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without the benefit of any closed transmission medium.

ARTICLE III

Sec. 440-3 Registration Required.

All telecommunications carriers and providers that offer or provide any telecommunications service to the public, either within the City, or outside the City from telecommunications facilities within the City, shall register with the City pursuant to this Article by providing the following information:

- A. The identity and legal status of the registrant, including any affiliates.
- B. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- C. A description of registrant's existing or proposed telecommunications facilities within the City.
- D. A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses, or institutions within the City.
- E. Information sufficient to determine whether the registrant is subject to public way licensing or franchising under this Title.
- F. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to Buffalo Charter Section 545 (Taxes Upon Gross Income or Gross Operating Incomes of Corporations and Persons Pursuing Utility Services).
- G. Information sufficient to determine that the registrant has applied for and received any authorizations required by the New York State Public Service Commission to provide telecommunications services or facilities within the City.
- H. Information sufficient to determine that the registrant has applied for and received any construction permit, operating license or other authorizations required by the Federal Communications Commission to provide telecommunications services or facilities within the City.
- I. Such other information as may be reasonably required by the City.

Sec. 440-4 Registration Fee.

Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee of Fifty Dollars (\$50.00).

Sec. 440-5 Purpose of Registration.

The purpose of registration under this Article is to:

- A. provide the City with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the City, or that own or operate

telecommunication facilities within the City;

- B. assist the City in enforcement of this Chapter;
- C. assist the City in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the City;
- D. assist the City in monitoring compliance with local, State and Federal laws.

ARTICLE IV

Sec. 440-6 Telecommunications Franchise.

A telecommunications franchise granting permission by the City shall be required of any telecommunications carrier who desires to occupy public ground of the City and to provide telecommunications service to any person or area in the City.

Sec. 440-7 Application Procedure.

Any person that desires a telecommunications franchise pursuant to this Chapter shall file an application with the City which shall include the following information:

- A. The identity of the franchise applicant, including all affiliates of the applicant.
- B. A description of the telecommunications services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.
- C. A description of the transmission medium that will be used by the franchisee to offer or provide such telecommunication services.
- D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:
 - (1) the location and route requested for applicant's proposed telecommunications facilities;
 - (2) the location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;
 - (3) the location(s), if any, for interconnection with the telecommunications facilities of other telecommunication carriers;
 - (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications on existing utility poles along the proposed route.
- F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
 - (1) the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
 - (2) the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

- (1) the location proposed for the new ducts or conduits;
- (2) the excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

H. A preliminary construction schedule and completion dates.

I. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

J. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

K. Information to establish that the applicant has obtained all applicable governmental licenses, approvals and permits including those required by the New York State Public Service Commission and the Federal Communications Commission, to construct and operate the facilities and to offer or provide the telecommunications services.

L. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

M. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

N. A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.

O. A description of applicant's access co-location and line extension policies.

P. The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire franchise area.

Q. Such other and further information as may be reasonably requested by the City.

Sec. 440-8 Determination by the City.

Within One Hundred and Fifty (150) days after receiving a complete application under Section 440-7 of this Chapter, the City shall issue a written determination granting or denying the application, in whole or in part, applying the following standards:

- A. The financial, legal, technical and managerial experience and capabilities of the applicant.
- B. The adequacy of the proposed compensation to be paid to the City, including the wiring and provision of telecommunications service to public schools and other building owned by the City.
- C. The capacity of the public ways to accommodate the applicant's proposed facilities.
- D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.

- I. The damage or disruption, if any, of public or private facilities, improvement, service, travel or landscaping if the franchise is granted.
- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that applicant will provide to the community and region.
- H. The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- J. Applicable federal and state telecommunications laws, regulations and policies.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

Sec. 440-9 Franchise Agreement.

Any Franchise Agreement granted pursuant to this Chapter shall be by written agreement which shall include, but not be limited to, the following terms and conditions:

- A. The term of the franchise shall not exceed fifteen (15) years.
- B. No franchise granted under this Chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.
- C. The compensation to be paid to the City shall be adequate and may include the provision of facilities or services to the City or both.
- D. The franchise may be terminated or cancelled in the event of the franchisee's failure to comply with the material terms and conditions of the agreement.
- E. A security fund shall be established to ensure the performance of the franchisee's obligations under the agreement.
- F. The City shall have the right to inspect the facilities of the franchisee and to order the relocation of such facilities.
- G. There shall be adequate insurance and indemnification requirements.
- H. All franchisees shall be required to maintain complete and accurate books of account and records which shall be made available on demand to the City for inspection.
- I. There shall be provisions to ensure quality workmanship and construction methods.
- J. There shall be provisions requiring the franchisee to comply with City laws, regulations and policies related to, but not limited to, employment, purchasing and investigations.
- K. There shall be provisions to ensure adequate oversight and regulation of the franchisee by the City.
- L. There shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City.

- M. There shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the agreement.
- N. All franchisees shall obtain all necessary licenses and permits from and comply with the Rules of the New York State Public Service Commission and the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee.
- O. There shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise.
- P. There shall be provisions requiring the franchisee to protect the property of the City and the delivery of public services from damage or interruption of operation resulting from the construction, operation, maintenance, repair or removal of improvements related to the franchise.
- Q. There shall be provisions designed to minimize the extent to which the public use of the streets of the city are disrupted in connection with the construction of improvements relating to the franchise.
- R. There shall be provisions to ensure that the franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for granted services.
- S. There shall be provisions to ensure that the franchisee shall make its telecommunications services available to the City at its most favorable rate for similarly situated users.
- T. Any other provisions as may be reasonably requested by the City.

ARTICLE V

Sec. 440-10 Renewal Applications

A. A grantee that desires to renew its franchise under this chapter shall, not more than 240 days nor less than 150 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following information:

- A. The information required pursuant to Section 440-6 of this Chapter.
- B. Any additional information required pursuant to the franchise agreement between the City and the grantee or other information as may be reasonable required by the City.

Sec. 440-11 Renewal Determination

Within 150 days after receiving a complete renewal application under Section 440-9 of this Chapter, the City shall issue a written determination granting or denying the renewal application in whole or in part applying the standards contained in Section 440-7 of this Chapter in addition to the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The continuing capacity of the public ways to accommodate the applicant's existing facilities.

D. The applicant's compliance with the requirements of this Title and the franchise agreement.

E. Applicable federal, state and local telecommunications laws, rules and policies.

F. Such other factors as may demonstrate that the continued grant to use the public ways will or will not serve the community interest.

Sec. 440-12 Obligation to Cure As a Condition of Renewal

No franchise shall be renewed until any ongoing violations or defaults in the grantor's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

ARTICLE VI

Sec. 440-13 Telecommunications License

A telecommunications license shall be required of any telecommunications carrier who desires to occupy public grounds of the City for the sole purpose of providing telecommunications services to persons or areas outside the City.

Sec. 440-14 License Application:

Any person that desires a telecommunications license shall file an application with the City which shall include the following information:

A. The identity of the license applicant, including all aliases of the applicant.

B. A description of the telecommunications services that are or will be offered or provided by licensee over its telecommunications facilities.

C. A description of the transmission medium that will be used by the licensee to offer or provide such telecommunications service.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:

(1) The location and route requested for applicant's proposed telecommunications facilities.

(2) The location of all overhead and underground public utility, telecommunication, cable water, sewer drainage and other facilities in the public way along the proposed route.

(3) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.

(4) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

- (1) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
 - (2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.
- G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:
- (1) the location proposed for the new ducts or conduits;
 - (2) the excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.
- H. A preliminary construction schedule and completion date.
- I. A preliminary traffic control plan.
- J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
- K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
- L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.
- M. All fees, deposits or charges required pursuant to this Chapter.
- N. Such other and further information as may be reasonably required by the City.

Sec. 440-15 Determination by the City

Within 150 days after receiving a complete application under Section 440-13, the City shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the application is denied, the written determination shall include the reasons for denial.

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The capacity of the public ways to accommodate the applicant's proposed facilities.
- D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the license is granted.
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the license is granted.
- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that applicant will provide to the community and region.

ARTICLE VII

Sec 440-16 Fees and Compensation

Reserved Compensation for Public Ways The City expressly reserves its right to fix a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or franchise grantee. Nothing in this Chapter shall prohibit the City and a grantee from agreeing to the compensation to be paid for the granted property rights. Such compensation shall be required by the City on a competitively neutral and non-discriminatory basis.

Sec. 440-17: Permit Fees All license or franchise grantees shall pay all applicable permit fees as required by the City.

Sec. 440-18: Cable Franchise Fees Nothing in this Chapter shall preclude the City from requiring a franchise fee from a cable operator or from requiring a franchise fee up to five per cent (5%) of a franchise's gross revenues as allowed under Federal Law.

Sec. 440-19: Regulatory Fees and Compensation Not a Tax The regulatory fees and costs provided for in this Chapter, and any compensation charged and paid for the public ways provided for in this Chapter, are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

ARTICLE VIII

Sec 440-20 Conditions of Grant

Location of Facilities: All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a license or franchise agreement: All facilities shall meet any applicable zoning ordinances or other applicable ordinances of the City.

- A. A grantee shall install its telecommunications facilities within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
- B. A grantee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
- C. Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the City, a grantee with permission to occupy the same public way must also locate its telecommunications facilities underground.
- D. Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a grantee that currently occupies the same public way shall relocate its facilities underground within a reasonable period of time, which shall not be later than the end of the grant term. Absent extraordinary circumstances or undue hardship as determined by the City Engineer, such relocation shall be made concurrently, to minimize the disruption of the public ways.
- E. Whenever new telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the grantee shall provide additional ducts, conduits, manholes and other facilities for non-discriminatory access to future carriers.

Sec. 440-21: Construction Permit. All license or franchise grantees are required to obtain construction permits for telecommunications facilities as required in Article 8 of this Title. However, nothing in the Article shall prohibit the City and a grantee from agreeing to alternative plan review, permit and construction procedures in a license or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Sec. 440-22: Interference with the Public Ways. No license or franchise grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the City Engineer.

Sec. 440-23: Damage to Property. No license or franchise grantee nor any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any City property, public ways of the City, other ways or other property located in, on or adjacent thereto.

Sec. 440-24: Notice of Work. Unless otherwise provided in a license or franchise agreement, no license or franchise grantee, nor any person acting on the grantee's behalf shall commence any non-emergency work in or about the Public Ways of the City or other ways without ten (10) working days advance notice to the City.

Sec. 440-25: Repair and Emergency Work. In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee shall notify the City as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

Sec. 440-26: Maintenance of Facilities. Each license or franchise grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Sec. 440-27: Relocation or Removal of Facilities. Within thirty (30) days following written notice from the City, a license or franchise grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the corporate authorities shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- A. The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways.
- B. The operations of the City or other governmental entity in or upon the public ways.

Sec. 440-28: Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related apparatus within the public ways of the City shall, at its own expense, remove such facilities or apparatus from the public ways of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- A. Upon expiration or termination of the grantee's telecommunications license or franchise.
- B. Upon abandonment of a facility within the public ways of the City.
- C. If the system or facility was constructed or installed without the prior grant of a telecommunications license or franchise.

- D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- E. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications license or franchise.

Sec. 440-29: Emergency Removal or Relocation of Facilities: The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

Sec. 440-30: Damage to Grantee's Facilities: Unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading filling, or work of any kind in the public ways by or on behalf of the city.

Sec. 440-31: Restoration of Public Ways, Other Ways and City Property.

- A. When a license or franchise grantee, or any person acting on its behalf, does any work in or affecting any Public Ways or Other Ways or City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- B. If weather or other conditions do not permit the complete restoration required by this Section, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Licensee's sole expense and the Licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. A grantee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

Sec. 440-32: Facilities Maps: Each license or franchise grantee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. Each grantee shall provide updated maps annually.

Sec. 440-33: Duty to Provide Information: Within ten (10) days of a written request from the City, each license or franchise grantee shall furnish the City with information sufficient to demonstrate:

- A. That grantee has complied with all requirements of this Title.
- B. That all municipal taxes and compensation due the City in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.
- C. All books, records, maps and other documents maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the City at reasonable times and intervals.

Sec. 440-34: Leased Capacity: A license or franchise grantee shall have the right, without prior City approval, to offer or provide capacity bandwidth to its customers, provided:

- A. Grantee shall furnish the city with a copy of any such lease or agreement.
- B. The customer or lessee has complied, to the extent applicable, with the requirements of this Title.

Sec. 440-35: Grantee Insurance: Unless otherwise provided in a license or franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

- A. Comprehensive general liability insurance with limits not less than
 - (a) Five Million Dollars (\$5,000,000.00) for bodily injury or death to each person;
 - (b) Five Million Dollars (\$5,000,000.00) for property damage resulting from any one accident; and,
 - (c) Five Million Dollars (\$5,000,000.00) for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000.00) for each person and Three Million Dollars (\$3,000,000.00) for each accident.
- C. Worker's Compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000.00).

- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000.00).

- E. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise, and such other period of time during which the grantee is operating without a franchise or license hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew."

- F. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Sec. 440-36: General Indemnification: Each license or franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a grant agreement made or entered into pursuant to this Chapter.

Sec. 440-37. Performance and Construction Surety: Before a license or franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance, acceptable to the City as may be required by this Chapter or by an applicable license or franchise agreement.

Sec. 440-38. Security Fund: Each grantee shall establish a permanent security fund with the City by depositing the amount of \$50,000.00 with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of grants so long as any of grantee's telecommunications facilities are located within the public ways of the City.

A. The fund shall serve as security for the full and complete performance of this Title, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to the grantee.

1. describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of grantee's act or default;
2. providing a reasonable opportunity for grantee to first remedy the existing or ongoing default or failure, if applicable;
3. providing a reasonable opportunity for grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable;
4. that the grantee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or his designee.

C. Grantees shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

Sec. 440-39. Construction and Completion Bond: Unless otherwise provided in a license or franchise agreement, a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of constructing grantee's telecommunications facilities within the public ways of the City shall be deposited before construction is commenced.

A. The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the City, including restoration of public ways and other property affected by the construction.

B. The construction bond shall guarantee, to the satisfaction of the City:

1. timely completion of construction;
2. construction in compliance with applicable plans, permits, technical codes and standards;
3. proper location of the facilities as specified by the City;
4. restoration of the public ways and other property affected by the construction.

5. the submission of "as-built" drawings after completion of the work as required by this Chapter;
6. timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Sec. 440-40: Coordination of Construction Activities. All grantees are required to cooperate with the City and with each other.

- A. By February 1 of each year, grantees shall provide the City with a schedule of their proposed construction activities in, around or that may affect the public ways.
- B. Each grantee shall meet with the City, other grantees and users of the public ways annually or as determined by the City to schedule and coordinate construction in the public ways.
- C. All construction locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damage.

Sec. 440-41: Assignments or Transfers of Grant. Ownership or control of a telecommunications system, license or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

- A. No grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the license or franchise, unless otherwise provided in a license or franchise agreement.
- B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.
- C. Grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of transfer:
 1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment;
 2. All information required of a telecommunications license or franchise applicant pursuant Sections 440-7 or 440-14 of this Chapter with respect to the proposed transfer or assignee;
 3. Any other information reasonably required by the City;
- D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this Title.
- E. Unless otherwise provided in a license or franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications license or franchise.
- F. Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the City under this Section or pursuant to a license or franchise agreement shall be void and is cause for revocation of the

grant.

Sec. 440-42: Transactions Affecting Control of Grant: Any transactions which singularly or collectively result in a change of ten percent (10%) or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunications license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth or grantee's telecommunications system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring the City approval pursuant to Section 440-41 hereof. Transactions between affiliated entities are not exempt from City approval.

Sec. 440-43: Revocation or Termination of Grant: A license or franchise granted by the City to use or occupy public ways of the City may be revoked for the following reasons:

- A. Construction or operation in the City or in the public ways of the City without a license or franchise grant of authorization.
- B. Construction or operation at an unauthorized location.
- C. Unauthorized substantial transfer of control of the grantee.
- D. Unauthorized assignment of a license or franchise.
- E. Unauthorized sale, assignment or transfer of grantee's franchise or license assets, or a substantial interest therein.
- F. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the City.
- G. Abandonment of telecommunications facilities in the public ways.
- H. Failure to relocate or remove facilities as required in this Chapter.
- I. Failure to pay taxes, compensation, fees or costs when and as due the City.
- J. Insolvency or bankruptcy of the grantee.
- K. Violation of material provisions of this Chapter.
- L. Violation of the material terms of a license or franchise agreement.

Sec. 440-44: Notice and Duty to Cure: In the event that the City believes that grounds exist for revocation of a license or franchise, he shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- B. That rebuts the alleged violation or noncompliance.
- C. That it would be in the public interest to impose some penalty or sanction less than revocation.

Sec. 440-45: Standards for Revocation or Lesser Sanctions: If after a hearing with due and adequate notice to the grantee the City determines that the grantee has violated or failed to comply with material provisions of this Chapter, or of a franchise or license agreement, the corporate authorities shall determine whether to revoke the license or franchise, or to establish

some lesser sanction and care, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- A. Whether the misconduct was egregious.
- B. Whether substantial harm resulted.
- C. Whether the violation was intentional.
- D. Whether there is a history of prior violations of the same or other requirements.
- E. Whether there is a history of overall compliance.
- F. Whether the violation was voluntarily disclosed, admitted or cured.

ARTICLE IX

CONSTRUCTION STANDARDS

Sec. 440-46: General. No person shall commence or continue with the construction, installation or operation of telecommunications within the City except as provided in this Article.

Sec. 440-47: Construction Codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Safety Code.

Sec. 440-48: Construction Permit. No person shall construct or install any telecommunications facilities within the City without first obtaining a construction permit therefor, provided, however:

- A. No permit shall be issued for the construction or installation of telecommunications facilities within the City unless the telecommunications carrier has filed a registration statement with the City pursuant to Article 3 of this Chapter.
- B. No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a license or franchise pursuant to Articles 4 or 6 of this Chapter.
- C. No permit shall be issued for the construction or installation of telecommunications facilities without payment of the applicable permit fees.

Sec. 440-49: Applications. Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
- B. The location and route of all facilities to be installed on existing utility poles.
- C. The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.
- D. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

E. The location of all other facilities to be constructed within the City, but not within the public ways.

F. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways.

G. The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, limbing, removing, replacing and restoring any trees or areas to be disturbed during construction.

Sec. 440-30: Engineer's Certification: All permit applications shall be accompanied by the certification of a registered professional engineer that the drawing, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Sec. 440-31: Traffic Control Plan: All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

Sec. 440-32: Issuance of Permit: Within forty-five (45) days after submission of all plans and documents required of the applicant and payment of the permit fees required by this Chapter, the Commissioner, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate.

Sec. 440-33: Construction Schedule: The permittee shall submit a written construction schedule to the Commissioner 10 working days before commencing any work in or about the public ways. The permittee shall further notify the Commissioner not less than 2 working days in advance of any excavation or work in the public ways.

Sec. 440-34: Compliance with Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The Commissioner or his designee shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

Sec. 440-35: Display of Permit: The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Commissioner or his designee at all times when construction work is occurring.

Sec. 440-36: Survey of Underground Facilities: If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a registered Illinois land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

Sec. 440-37: Noncomplying Work: Upon order of the Commissioner, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed.

Sec. 440-38: Completion of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the city ways and other public and private property. All construction work authorized by a permit within city ways, including restoration, must be completed within 120 days of the date of issuance.